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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,897	01/17/2002	Gerhard J. Haas		2611

7590 09/03/2002
Walter D. Ames
6718 Wemberly Way
McLean, VA 22101

EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 09/03/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/046,897

Applicant(s)

HAAS, GERHARD J.

Examiner

Susan Coe

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____.

DETAILED ACTION

1. Claims 1-14 are currently pending.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, drawn to a method of sanitizing udders and teats of dairy cows, classified in class 424, subclass 725.
 - II. Claims 9-14, drawn to a hop compound, classified in class 424, subclass 725.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used in a different process, such as the use of hops in making beer.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Walter Ames on August 28, 2002 a provisional election was made with traverse to prosecute the invention of group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action.

4. Claims 9-14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
5. Claims 1-8 are examined on the merits.

Claim Objections

Claim 7 is objected to because of the following informalities: "tetraihydroisohumulone" appears to be a misspelling of "tetrahydroisohumulone." Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 is indefinite because it is not clear what amounts of pathogens must be killed in order to meet the limitation of "substantial amounts." In addition, it is not clear what amounts of trauma are considered to be "substantial trauma" to the cow. Therefore, the metes and bounds of the claim are unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1651

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Pat.

Appl. No. 01172332 A.

Applicant's claims are drawn to a method of sanitizing the udders and teats of dairy cows using an aqueous hops solution.

JP '332 teaches applying a hops extract to treat bovine mastitis caused by *Staphylococcus aureus* (see English abstract). JP '332 does not specifically teach that the hops extract contains the specific compounds claimed by applicant; however, any hops extract would contain these compounds.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,170,638 in view of Japanese Pat. Appl. No. 01172332 A.

US '638 teaches using a topical hops extract to kill *Staphylococcus aureus* (see column 1, lines 49-60). It is specifically stated that the extract contains humulones and lupulones (claim 1); however, the hops extract would also contain the other compounds claimed by applicant because these are natural parts of a hops extract.

Art Unit: 1651

US '638 does not specifically teach using the hops extract to sanitize the teats and udders of cows. However, JP '332 teaches that *S. aureus* is the causative agent of bovine mastitis. Therefore, since the hops extract of US '638 is taught to be topically active against *S. aureus*, a person of ordinary skill in the art would reasonably expect that the extract of US '638 would be useful in sanitizing the teats and udders of cows. Thus, based on the teachings of the references, a person of ordinary skill in the art would be motivated to use the hops extract of US '638 to sanitize the teats and udders of cows.

9. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,370,863 in view of Japanese Pat. Appl. No. 01172332 A.

US '863 teaches that various hops acids have topical antibacterial activity (see column 1, lines 44-52). US '863 teaches that tetrahydroisohumulone and other iso forms of humulone and lupulone function against *S. aureus* (see Table 1).

US '863 does not specifically teach using the hops extract to sanitize the teats and udders of cows. However, JP '332 teaches that *S. aureus* is the causative agent of bovine mastitis. Therefore, since the hops extract of US '863 is taught to be topically active against *S. aureus*, a person of ordinary skill in the art would reasonably expect that the hops acids of US '863 would be useful in sanitizing the teats and udders of cows. Thus, based on the teachings of the references, a person of ordinary skill in the art would be motivated to use the hops extract of US '863 to sanitize the teats and udders of cows.

10. No claims are allowed.

Art Unit: 1651

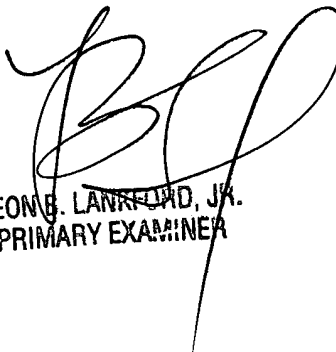
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SDC

August 29, 2002


LEON B. LANFORD, JR.
PRIMARY EXAMINER